

### REMARKS/ARGUMENTS

In response to the Interview Summary mailed on October 19, 2009 in the above-identified application requiring Applicant to include the substance of the interview in the formal written reply to the last Office Action, the substance of the interview follows.

Applicant's representative conducted a telephonic interview on October 13, 2009 with the Examiner.

Applicant proposed to amend independent claim 9 to claim a range of hole sizes. The Examiner, at first, indicated that claiming of a range of hole sizes in independent claim 9 was not sufficient to define a patentable feature over the applied references.

However, Applicant's representative argued that the range of hole sizes was disclosed by the specification to provide a relatively silent suction (low noise) levels without reducing the suction capacity. The Examiner agreed that if Applicant amended independent claim 9 to indicate that the range of hole sizes reduce noise levels, the claims would overcome the applied references. However, he indicated that a further search will be necessary to determine whether new references could be found directed towards a range of hole sizes to reduce noise. The Examiner also asked Applicant's representative for the section number of the Manual of Patent Examining Procedure (MPEP) supporting Applicant's argument regarding the patentability of the range of hole sizes reducing noise levels. Although Applicant's representative could not immediately respond with a section number, Applicant's representative subsequently sent relevant pages of the MPEP by facsimile.

Applicant's representative also brought up, during the interview, the possibility of amending claim 9 to provide that the continuous geometry feature of the double-cone device also reduces noise generated by the double-cone device, as disclosed in the specification. The Examiner responded that the feature of the double-cone device being of a continuous geometry was not a sufficiently definite structure for it to have patentable weight even when coupled with the reduction of noise generated by the double-cone device.

Applicant objects to the attachment by the Examiner to the Interview Summary of a copy of a draft Amendment sent by Applicant's representative to the Examiner by facsimile before the telephonic interview of October 13, 2009. The first page of the copy of the draft Amendment attached to the Interview Summary is clearly marked at the top thereof "**DRAFT - FOR EXAMINER USE ONLY**." Applicant did **not** consent to the inclusion of this draft

Amendment as part of the record herein by the Examiner attaching it to the Interview Summary in the above-identified application, as evidenced by the presence of the previously quoted phrase **“DRAFT - FOR EXAMINER USE ONLY”** on the top of the first page of the draft Amendment. Therefore, Applicant respectfully requests that the draft Amendment be stricken from the record of the above-identified application.

Claim 9 was rejected under 35 U.S.C. §102(b) as being anticipated by Work, U.S. Patent No. 2,241,337. Reconsideration of the rejection is respectfully requested.

Claim 9 was rejected under 35 U.S.C. §103(a) as being unpatentable over Stark, WO 01/16493, in view of Frenzl, U.S. Patent No. 3,823,872. Reconsideration of the rejection is respectfully requested.

Claims 10-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Work. Reconsideration of the rejection is respectfully requested.

Claims 10-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Stark in view of Frenzl. Reconsideration of the rejection is respectfully requested.

Independent claim 9 has been amended to provide, in part, for, “the second porous diverging section having holes with sizes in the range of 50 to 500  $\mu$ m to provide relatively silent suction of the fluid without reducing the suction capacity.” Antecedent basis for the amendment is found in the specification, for example, on page 10, lines 19-21.

In support of the rejection of claim 9 based upon Work, the Examiner alleges that the second porous diverging section is found as element 29 in Work, (Office Action, page 2, paragraph 4, line 4). However, element 29 is disclosed in Work as merely ports used by air entering the device 15, (page 2, left column, lines 16-17), and there does appear to be any teaching, disclosure, or suggestion as to the size of these ports in Work, or that they provide relatively silent suction of the fluid without reducing the suction capacity, as claimed in claim 9.

In support of the rejection of independent claim 9 based upon Stark in view of Frenzl, the Examiner indicates that Frenzl teaches a diverging section (18, 22), which is porous, (Office Action, page 4, line 3). Frenzl appears to disclose a porous intermediate part 21, bordering on diverging zone 22. Porous intermediate part 21 appears to conduct steam, the steam traveling from a source through a conduit 27 and porous intermediate part 21, (column 5, lines 29-49; Fig. 1). There does not appear to be any teaching, disclosure, or suggestion of the size of the pores in

porous intermediate part 21 or that they provide relatively silent suction of the fluid without reducing the suction capacity, as claimed in claim 9.

The MPEP provides that “[a] particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognizable result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation,” (MPEP §2144.05, page 2100-152, left column, clause B, lines 1-5). Thus, the range of hole sizes claimed in independent claim 9 must be recognized to achieve the result of providing relatively silent suction of the fluid without reducing the suction capacity in order for the determination of the range of hole sizes claimed herein to be characterized as routine experimentation. It is respectfully submitted that the applied references do not teach, disclose, or suggest that the range of hole sizes, as claimed herein, provide relatively silent suction of a fluid without reducing the suction capacity, as claimed herein. Therefore, the determination of the range of hole sizes claimed herein cannot be characterized as routine experimentation.

New dependent claims 16 and 17 have also been added. New dependent claim 16 provides that the continuous geometry of the double-cone device is configured to cause the flow profiles of the fluid in the neck, in the second porous diverging section, and in the third diverging section to remain in contact with the wall of the neck, with the wall of the second porous diverging section, and with the wall of the third diverging section. New dependent claim 17 provides that the continuous geometry of the double-cone device is configured to reduce noise levels during operation of the device. Antecedent basis for new dependent claims 16 and 17 is found in the specification, for example, on page 11, lines 4-12.

In support of the rejection of independent claim 9, the Examiner alleges that both Work and Stark teach the feature of the double-cone device having a continuous geometry, (Office Action, page 2, paragraph 4, lines 1-3; page 3, paragraph 7, lines 1-3). However, it is respectfully submitted that neither Work nor Stark discloses, teaches, or suggests the feature of the continuous geometry of the double-cone device being configured to produce flow profiles of the fluid flowing through the device to be as provided in dependent claim 16, or that the feature of the continuous geometry of the double-cone device is configured to reduce noise levels during operation of the device, as provided in dependent claim 17.

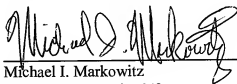
Since each of claims 10-12 and 16-17 is directly dependent upon independent claim 9, each of claims 10-12 and 16-17 is allowable for at least the same reasons recited above with respect to the allowability of independent claim 9.

In view of the foregoing amendments and remarks, allowance of claims 9-12 and 16-17 is respectfully requested, claims 1-8 and 13-15 having been withdrawn from consideration.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Michael I. Markowitz", is written over a horizontal line.

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